

Appl. No. 10/617,326  
Amdt. Dated April 28, 2008  
Reply to Office action of December 28, 2007

**REMARKS/ARGUMENTS**

Claims 64-49 are pending in the instant application. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 26 and 30 of copending application no. 10/356,240. Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 49 and 53 of copending application no. 10/761,794. Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 4-6, 7, 15, and 16 of United States Patent No. 6,491,895. Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-5 and 9 of United States Patent No. 7,179,450. Claims 64 and 69 have been amended to more distinctly claim the present invention. Applicant respectfully submits that none of the amendments constitute new matter in contravention of 35 U.S.C. §132. Reconsideration is respectfully requested.

As noted above, Applicant has amended claims 64 and 69 to more distinctly claim the present invention in view of the previous-made election.

Claims 64-69 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 26 and 30 of copending application no. 10/356,240 as well as over claims 49 and 53 of copending application no. 10/761,794. These rejections are respectfully traversed.

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In the instant Office Action, the Office cites MPEP 804 to clarify when a provisional nonstatutory obviousness-type double patent rejection is to be maintained and withdrawn.

However, the Office then concludes this discussion with the following:

**Thus, since 10/356,240 was filed prior to the instant application, a terminal disclaimer is necessary in order to overcome the double patenting rejection. However, for 11/623,352 since the filing date is later than that of the instant invention when only the provisional rejection is present, then the ODP over 11/623,352 will be withdrawn.**  
(emphasis added).

With respect to application no. 10/356,240, Applicant notes that this application has now issued as United States Patent No. 7,179,450 (i.e., the subject of the new rejection noted hereinabove). Applicant respectfully submits that this rejection thus now stands moot. Moreover, contrary to the Office's assertion in the quoted passage above, Applicant notes that the 10/356,240 application was not filed prior to the instant application. While the 10/356,240 application has a lower serial number than the instant application, an examination of the priority dates reveals that it has a later priority date than the instant application. The 10/356,240 application was filed January 31, 2003 as a continuation-in-part of a parent application having a priority date of September 20, 2001 with an international filing date of September 6, 2002, whereas the instant application has a priority date of March 13, 2000 with an international filing date of March 12, 2001. The 10/356,240 application was filed directly with the United States Patent and Trademark Office while the instant application was still in the demand phase of the international application process (ie, before its entry into the United States). This is merely the case of a later-filed application getting to the United States Patent and Trademark Office first. Reconsideration is respectfully requested.

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With respect to the provisional rejection over application serial no. 10/761,794, Applicant respectfully notes that the above-quoted passage from the Office Action refers to application serial no. 11/623,352, not the 10/761,794 application cited in the instant Office Action. Applicant presumes, for the purposes of this response, that the Office is referring to application serial no. 10/761,794 for which the ODP will be withdrawn when only the provisional ODP remains as between these two applications for the present invention. Applicant respectfully submits that the provisional rejection over 10/761,794 thus stands obviated in view of this response.

Reconsideration and withdrawal of these provisional rejections are respectfully requested.

Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 4-6, 7, 15, and 16 of United States Patent No. 6,491,895. Applicant respectfully submits that this rejection stands obviated in view of the submission of a Terminal Disclaimer with respect to this reference. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 64-69 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-5 and 9 of United States Patent No. 7,179,450. Applicant respectfully submits that this rejection stands obviated in view of the submission

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of a Terminal Disclaimer with respect to this reference. Reconsideration and withdrawal of the rejection are respectfully requested.

In view of the amendments and remarks hereinabove, Applicant respectfully submits that the instant application, including claims 64-69, is in condition for allowance. Favorable action thereon is respectfully requested.

Any questions with respect to the foregoing may be directed to Applicant's undersigned counsel at the telephone number below.

Respectfully submitted,

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